



AP/3761  
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PTO/SB/21 (03-03)  
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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	08/661,834	
	Filing Date	11 June 1996	
	First Named Inventor	Kronzer	
	Art Unit	3761	
	Examiner Name	A. Lewis	
Total Number of Pages in This Submission	5	Attorney Docket Number	45751US012

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PATENT  
Docket No.: 45751US012

44 DL  
(NE)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

JOSEPH P. KRONZER ET AL.

Serial No.: 08/661,834

Filed: June 11, 1996

For: FIBROUS FILTRATION FACE MASK

Group Art Unit: 3761

Examiner: Aaron J. Lewis

**RESPONSE**

Assistant Commissioner for Patents  
Washington, D.C. 20231

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Dear Sir:

In response to the Office Action mailed May 16, 2003, applicants submit the following remarks.

**I. THE OFFICE ACTION SHOULD NOT HAVE BEEN MADE FINAL**

The Office Action should not have been made final since it is based on a new claim interpretation that substantially presents a new ground of rejection. Applicants have never had an opportunity to respond to this new interpretation and the resulting new rejection.

This request to withdraw finality is with the proviso that if the Examiner considers applicants' arguments presented below, then applicants will not dispute the final status of the Office Action.

**II. THE CLAIM INTERPRETATION IN THE OFFICE ACTION IS CONTRARY TO THE BOARD'S DECISION ON APPEAL**

In the DECISION ON APPEAL (Paper No. 40), the Board refused to sustain the rejection based on the second paragraph of section 112. On pages 3-4 of the Decision, the Board explained the meaning of the claim language "with the proviso that if the bicomponent fiber content is 85 weight percent or greater, then the surface fuzz value exceeds 8.0." As stated by the Board:

the claim states that the non-woven fibrous layer have a fuzz value of not less than 7.5  
unless the bicomponent fiber content is 85 weight percent or greater, in which case the  
fuzz value requirement must exceed 8.0

Decision On Appeal, page 4, lines 12-14 (emphasis in original).

Thus, the claim interpretation in the Office Action is contrary to the Board's Decision on Appeal because it includes within the claim scope fibrous layers having a bicomponent fiber content of greater than 85% and a fuzz value of 7.5-8.0.

**III. THE OFFICE ACTION IS BASED ON AN INCORRECT CLAIM INTERPRETATION**

Independent claim 32 states, in relevant part:

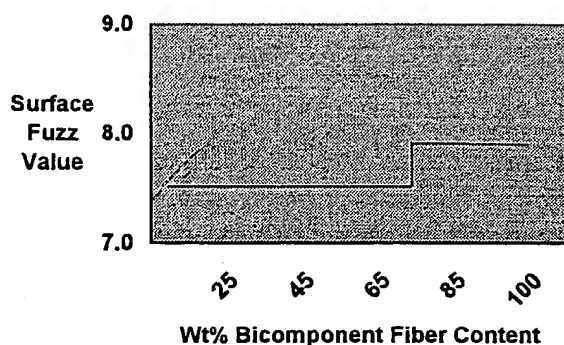
(b) a nonwoven fibrous layer attached to the harness and containing at least 40 weight percent thermally bonding fibers based on the weight of fibers in the nonwoven fibrous layer, at least 10 weight percent of the fibers in the nonwoven fibrous layer being bicomponent fibers, the nonwoven fibrous layer being molded in a cup-shaped configuration and having a surface fuzz value of not less than 7.5 after being subjected to a surface fuzz abrasion test, with the proviso that if the bicomponent fiber content is 85 weight percent or greater, then the surface fuzz value exceeds 8.0.

It should be indisputable that, in the foregoing claim, the "surface fuzz value" is a characteristic of the "nonwoven fibrous layer." By its placement in paragraph (b), it is clear that the "proviso" must also apply to the "nonwoven fibrous layer." In other words, "the bicomponent fiber content" means the "the bicomponent fiber content" of the "nonwoven fibrous layer." There is no other plausible interpretation.

It may be mentioned that the term "proviso" is defined as "a clause in a document making a qualification or condition." The American Heritage Dictionary, Dell Publishing Co., 1983.

Paragraph (b) of claim 25 is essentially the same as claim 32 except that it mentions the option of including staple fibers in the "nonwoven fibrous layer." As in claim 32, the "nonwoven fibrous layer" is required to have a fuzz value of not less than 7.5 unless the bicomponent fiber content is 85 weight percent or greater, in which case the fuzz value must exceed 8.0.

As the claims are presently worded, the nonwoven fibrous layer has a surface fuzz value of not less than 7.5 under all instances regardless of bicomponent fiber content. If the bicomponent fiber content is 85 weight percent or greater, however, the surface fuzz then exceeds 8.0. The second step is only reached if the bicomponent fiber content is 85 weight percent or greater. The following chart shows what is being claimed:



**IV. UNDER THE CORRECT CLAIM INTERPRETATION, THE CLAIMS ARE ALLOWABLE OVER THE CITED ART**

As shown in Comparative Examples 24 and 25 (see Table 1 of the specification), nonwoven layers containing 85% or less of bicomponent fibers have average surface fuzz values substantially less than 7.5 (5.0 and 6.0 for 70% and 85%, respectively). Thus, the nonwoven fibrous layers of Dyrud containing 85% or less of bicomponent fibers would not inherently possess a surface fuzz value of at least 7.5.

In the "Response to Arguments" section of the Office Action, the Examiner has acknowledged that applicants' arguments are "persuasive with respect to a surface fuzz value which exceeds 8.0." Thus, the Examiner appears to acknowledge that prior art nonwoven fibrous layers comprising greater than 85% bicomponent fibers do not inherently possess a surface fuzz value that exceeds 8.0.

Therefore, with a proper claim interpretation, the invention of claims 25 and 32 are allowable over the cited art.

V. DEPENDENT CLAIMS 28, 31, 33 and 35-37 ARE ADDITIONALLY PATENTABLE AND SHOULD NOT HAVE BEEN REJECTED

In the "Response to Arguments" section of the Office Action, the Examiner has acknowledged that applicants' arguments are "persuasive with respect to a surface fuzz value which exceeds 8.0." Therefore, even using the incorrect claim interpretation stated by the Board in its On Request For Rehearing, claims 28, 31, 33 and 35-37 should not have been rejected since each of these claims recite a surface fuzz value which exceeds 8.0.

Applicants respectfully request the Examiner to withdraw the rejection of these claims, and, if the rejection of the independent claims is maintained, indicate that claims 28, 31, 33 and 35-37 are merely objected to.

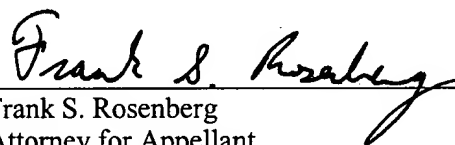
CONCLUSION

In its Decision On Appeal, the Board correctly interpreted the claims as stating "that the non-woven fibrous layer have a fuzz value of not less than 7.5 unless the bicomponent fiber content is 85 weight percent or greater, in which case the fuzz value requirement must exceed 8.0." Under this correct claim interpretation, the claims are allowable over the cited art.

Furthermore, whether using the correct or the incorrect interpretation, claims 28, 31, 33 and 35-37 contain allowable subject matter and the rejection of these claims cannot be maintained.

Dated this 7th day of July, 2003.

Respectfully submitted,



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